

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

CVD EQUIPMENT CORPORATION,	:	Civil Action No.: 10 CV 0573
	:	(RJH) (RLE)
Plaintiff,	:	
-against-	:	
TAIWAN GLASS INDUSTRIAL	:	
CORPORATION, and MIZUHO	:	
CORPORATE BANK, LTD.,	:	
Defendants.	:	

-----X

TAIWAN GLASS INDUSTRIAL CORPORATION,

Counterclaim Plaintiff,

-against-

CAPITAL ONE, N.A.,

Counterclaim Defendant.

-----X

REPLY TO COUNTERCLAIM

Counterclaim Defendant Capital One, National Association (“Capital One”), by its undersigned attorneys, as and for its Reply (the “Reply”) to the Amended Answer and Counterclaim (the “Counterclaim”) of defendant Taiwan Glass Industrial Corporation (“Taiwan”), states as follows:

1. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1.
2. Capital One admits the allegations of paragraph 2 on information and belief.
3. Capital One admits the allegations of paragraph 3.

Jurisdiction

4. Capital One neither admits nor denies the allegations of paragraph 4 to the extent they state a legal conclusion to which no response is required. To the extent a response is required, Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4.

5. Capital One neither admits nor denies the allegations of paragraph 5 to the extent they state a legal conclusion to which no response is required. To the extent a response is required, Capital One denies the allegations contained in paragraph 5 and states that Capital One is a national banking association organized under the laws of the United States.

6. Capital One neither admits nor denies the allegations of paragraph 6, which state a legal conclusion to which no response is required.

Facts

7. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7.

8. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8.

9. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9.

10. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10.

11. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11.

12. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12.

13. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13.

14. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14.

15. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15.

16. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 except admits, on information and belief, that Taiwan entered into the Contract¹ with CVD and respectfully refers the Court to the Contract for a complete statement of its terms.

17. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 and respectfully refers the Court to the Contract for a complete statement of its terms.

18. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 and respectfully refers the Court to the Contract for a complete statement of its terms.

19. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 and respectfully refers the Court to the Contract for a complete statement of its terms.

20. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 and respectfully refers the Court to the Contract for a complete statement of its terms.

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in Taiwan's Counterclaim.

21. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 and respectfully refers the Court to the Contract for a complete statement of its terms.

22. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 and respectfully refers the Court to the Contract for a complete statement of its terms.

23. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23.

24. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24 except admits, on information and belief, that Taiwan received the CVD L/C on or about October 9, 2008.

25. Capital One admits the allegations of paragraph 25 and respectfully refers the Court to the CVD L/C for a complete statement of its terms.

26. Capital One denies the allegations of paragraph 26 except respectfully refers the Court to the CVD L/C for a complete statement of its terms.

27. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 27 and respectfully refers the Court to the Contract for a complete statement of its terms.

28. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 28 and respectfully refers the Court to the Contract for a complete statement of its terms.

29. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29.

30. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 30.

31. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 31.

32. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 32.

33. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 33.

34. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 34.

35. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 35.

36. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 36.

37. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 37.

38. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 38.

39. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 39.

40. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 40.

41. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 41 and respectfully refers the Court to the Contract for a complete statement of its terms.

42. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 42.

43. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 43 and respectfully refers the Court to the Contract for a complete statement of its terms.

44. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 44 and respectfully refers the Court to the Contract for a complete statement of its terms.

45. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 45 and respectfully refers the Court to the Contract for a complete statement of its terms.

46. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 46.

47. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 47.

48. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 48.

49. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 49 and respectfully refers the Court to the Contract for a complete statement of its terms.

50. Capital One neither admits nor denies the allegations of paragraph 50 to the extent they state a legal conclusion to which no response is required. To the extent a response is required, Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 50 and respectfully refers the Court to the Contract for a complete statement of its terms.

51. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 51 and respectfully refers the Court to the Contract for a complete statement of its terms.

52. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 52 and respectfully refers the Court to the Contract for a complete statement of its terms.

53. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 53 except admits that Capital One issued the CVD L/C in favor of Taiwan and that the CVD L/C was cancelled. Capital One further denies that the cancellation was improper.

54. Capital One denies the allegations contained in paragraph 54 except respectfully refers the Court to the CVD L/C for a complete statement of its terms.

55. Capital One denies the allegations contained in paragraph 55 except admits that on or about December 8, 2009, Capital One notified Mizuho (Taiwan's bank) that the Standby LOC had been cancelled based on the bill of lading CVD submitted to Capital One and respectfully refers the Court to the December 8, 2009 notification for a complete statement of its contents.

56. Capital One neither admits nor denies the allegations of paragraph 56 to the extent they state a legal conclusion to which no response is required. To the extent a response is required, Capital One denies the allegations contained in paragraph 56 and respectfully refers the Court to the documents referenced therein for a complete statement of their contents.

57. Capital One neither admits nor denies the allegations of paragraph 57 to the extent they state a legal conclusion to which no response is required. To the extent a response is required, Capital One denies the allegations contained in paragraph 57 except admits that Taiwan stated its disagreement that the CVD L/C had been cancelled.

58. Capital One neither admits nor denies the allegations of paragraph 58 to the extent they state a legal conclusion to which no response is required. To the extent a response is required Capital One denies the allegations contained in paragraph 58 except admits that Taiwan made a demand to Capital One for payment under the CVD L/C after it was cancelled.

59. Capital One denies the allegations contained in paragraph 59 except admits that on or about January 6, 2010 Capital sent a telex to Mizuho as Taiwan's bank and respectfully refers the Court to the text of that document for a complete statement of its contents.

60. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of paragraph 60. Capital One denies the remaining allegations of paragraph 60 except admits that on or about January 11, 2010 Taiwan made another demand for payment under the CVD L/C.

61. Capital One denies the allegations contained in paragraph 61 except admits that on or about January 14, 2010 Capital One sent a telex to Mizuho as Taiwan's bank and respectfully refers the Court to the text of that document for a complete statement of its contents.

62. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 62 except admits that CVD made a demand under the Taiwan Glass L/C.

63. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 63.

64. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 64.

65. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 65 except admits that CVD submitted a bill of lading purporting to have shipped the Equipment to Taiwan.

RESPONSE TO FIRST COUNTERCLAIM FOR RELIEF
(Breach of Contract against CVD)²

66. Capital One repeats and re-alleges the allegations contained in paragraphs 1 through 65 of its Reply as if fully set forth herein.

67. Capital One neither admits nor denies the allegations of paragraph 67 to the extent they state a legal conclusion to which no response is required. To the extent a response is required, Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 67.

68. Capital One neither admits nor denies the allegations of paragraph 68 to the extent they state a legal conclusion to which no response is required. To the extent a response is required, Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 68.

² Taiwan's First through Sixth Counterclaims for Relief are not directed to Capital One, and therefore no response is required by Capital One. Capital One sets forth the responses in paragraphs 66 through 91 below solely in the event a response is required.

69. Capital One neither admits nor denies the allegations of paragraph 69 to the extent they state a legal conclusion to which no response is required. To the extent a response is required, Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 69.

70. Capital One neither admits nor denies the allegations of paragraph 70 to the extent they state a legal conclusion to which no response is required. To the extent a response is required, Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 70.

RESPONSE TO SECOND COUNTERCLAIM FOR RELIEF
(Fraud in the Inducement against CVD)

71. Capital One repeats and re-alleges the allegations contained in paragraphs 1 through 65 of its Reply as if fully set forth herein.

72. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 72.

73. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 73.

74. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 74.

75. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 75.

RESPONSE TO THIRD COUNTERCLAIM FOR RELIEF
(Tortious Interference with Contract against CVD)

76. Capital One repeats and re-alleges the allegations contained in paragraphs 1 through 65 of its Reply as if fully set forth herein.

77. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 77 except that Capital One denies any breach of the CVD L/C.

78. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 78 except that Capital One denies any breach of the CVD L/C.

79. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 79 except that Capital One denies any breach of the CVD L/C.

RESPONSE TO FOURTH COUNTERCLAIM FOR RELIEF
(Fraud against CVD)

80. Capital One repeats and re-alleges the allegations contained in paragraphs 1 through 65 of its Reply as if fully set forth herein.

81. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 81 except admits that the CVD L/C was cancelled.

82. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 82 except admits that the CVD L/C was cancelled.

83. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 83 except that Capital One denies any breach of the CVD L/C.

RESPONSE TO FIFTH COUNTERCLAIM FOR RELIEF
(Conversion against CVD)

84. Capital One repeats and re-alleges the allegations contained in paragraphs 1 through 65 of its Reply as if fully set forth herein.

85. Capital One neither admits nor denies the allegations of paragraph 85 to the extent they state a legal conclusion to which no response is required. To the extent a response is required, Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 85.

86. Capital One neither admits nor denies the allegations of paragraph 86 to the extent they state a legal conclusion to which no response is required. To the extent a response is required, Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 86 except admits that the CVD L/C was cancelled and denies that such cancellation was improper.

87. Capital One denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 87.

RESPONSE TO SIXTH COUNTERCLAIM FOR RELIEF
(Unjust Enrichment against CVD)

88. Capital One repeats and re-alleges the allegations contained in paragraphs 1 through 65 of its Reply as if fully set forth herein.

89. Capital One denies the allegations contained in paragraph 89 except admits that the CVD L/C was cancelled and denies that such cancellation was improper.

90. Capital One denies the allegations contained in paragraph 90 except admits that the CVD L/C was cancelled and denies that such cancellation was improper.

91. Capital One denies the allegations contained in paragraph 90.

RESPONSE TO SEVENTH COUNTERCLAIM FOR RELIEF
(Wrongful Dishonor of the CVD L/C against Capital One)

92. Capital One repeats and re-alleges the allegations contained in paragraphs 1 through 65 of its Reply as if fully set forth herein.

93. Capital One denies the allegations contained in paragraph 93.

94. Capital One denies the allegations contained in paragraph 94.

95. Capital One denies the allegations contained in paragraph 95.

96. Capital One denies the allegations contained in paragraph 96.

DEFENSES

Capital One reserves all affirmative defenses available under any applicable law and its right to assert additional defenses if discovery in this action makes known facts that support such defenses. Capital One asserts the following defenses without assuming the burden of proof on such defenses to the extent it would otherwise rest on Taiwan.

FIRST DEFENSE

97. The Counterclaim fails to state a claim on which relief may be granted.

SECOND DEFENSE

98. Taiwan's claims are barred, in whole or in part, by the doctrine of waiver.

THIRD DEFENSE

99. Taiwan's claims are barred, in whole or in part, by the doctrine of estoppel.

FOURTH DEFENSE

100. Taiwan's claims are barred by the New York U.C.C.

FIFTH DEFENSE

101. Taiwan's claims are barred, in whole or in part, by the terms of the CVD L/C.

SIXTH DEFENSE

102. Taiwan's claims are because the CVD L/C was cancelled before Taiwan's demand.

SEVENTH DEFENSE

103. Taiwan's claims are barred by the bills of lading submitted by CVD in support of cancellation.

EIGHTH DEFENSE

104. Capital One acted at all times in good faith.

NINTH DEFENSE

105. At all relevant times, Capital One relied in good faith on information supplied by other persons.

TENTH DEFENSE

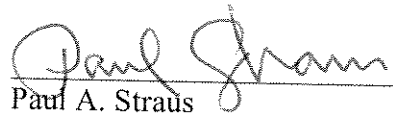
106. Taiwan has failed to mitigate its damages, if any.

WHEREFORE, Capital One demands that a judgment be entered dismissing Taiwan's Counterclaim and awarding Capital One its attorneys' fees and costs in defending the action, together with such other relief as the Court deems just and proper.

Dated: April 14, 2011
New York, N.Y.

KING & SPALDING LLP

By:



Paul A. Straus
J. Emmett Murphy
Paul B. Maslo

1185 Avenue of the Americas
New York, NY 10036
Tel: (212) 556-2100
Fax: (212) 556-2222

Attorneys for Capital One, N.A.